

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Case No: C 12-4097 SBA
DISMISSAL ORDER
Docket 3

13 Tyrone Hurt (“Plaintiff”), proceeding pro se, brings the instant civil rights action
14 against “The United Klans.” See Compl., Dkt. 1. Plaintiff has also filed an application to
15 proceed in forma pauperis (“IFP”). As set forth below, the Court dismisses this action
16 pursuant to 28 U.S.C. § 1915(e)(2), and denies Plaintiff’s IFP application as moot.

17 | I. LEGAL STANDARD

Under § 1915(e)(2), federal courts are authorized to review claims filed IFP prior to service and to dismiss the case at any time if the court determines that: (1) the allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) the action fails to state a claim; or (4) the action seeks monetary relief from a defendant who is immune from such relief. A pleading filed by a pro se plaintiff must be liberally construed. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

24 To determine whether an IFP complaint passes muster under § 1915, the Court
25 applies the same standard applicable to motions to dismiss under Rule 12(b)(6) of the
26 Federal Rules of Civil Procedure. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
27 1998). A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the
28 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support

1 a cognizable legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). “To
 2 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
 3 true, to ‘state a claim to relief that is plausible on its face.’ ” Ashcroft v. Iqbal, 556 U.S.
 4 662, 678, (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim
 5 has facial plausibility when a plaintiff “pleads factual content that allows the court to draw
 6 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556
 7 U.S. at 678.

8 **II. DISCUSSION**

9 In the instant case, Plaintiff has failed to allege facts stating a claim for relief that is
 10 plausible on its face. The allegations in the complaint are vague and largely
 11 incomprehensible. Although not entirely clear, it appears that Plaintiff seeks to state a civil
 12 rights claim under the Eighth Amendment against “The United Klans” predicated on the
 13 bombing of the 16th Street Baptist Church in Birmingham, Alabama in 1963. As relief,
 14 Plaintiff seeks, among other things, an order permanently exiling the Klu Klux Klan from
 15 the United States.

16 The Court construes Plaintiff’s complaint as attempting to allege a violation of a
 17 right secured by the United States Constitution under 42 U.S.C.1983 or Bivens v. Six
 18 Unknown Named Fed. Narcotics Agents, 403 U.S. 388 (1971), which is the federal analog
 19 to suits brought under § 1983. Iqbal, 556 U.S. at 675.¹ To state a claim under § 1983, a
 20 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or
 21 laws of the United States was violated; and (2) that the alleged violation was committed by
 22 a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988);
 23 Ketchum v. Alameda County, 811 F.2d 1243, 1245 (9th Cir. 1987). To state a private
 24 cause of action under Bivens, Plaintiff must allege: (1) the violation of a right secured by
 25 the Constitution of the United States; and (2) that the alleged deprivation was committed by
 26

27 ¹ Bivens “established that the victims of a constitutional violation by a federal agent
 28 have a right to recover damages against the official in federal court despite the absence of
 any statute conferring such a right.” Carlson v. Green, 446 U.S. 14, 18 (1980).

1 a federal actor. See Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991) (§ 1983 and
 2 Bivens actions are identical save for the replacement of a state actor under § 1983 by a
 3 federal actor).

4 As an initial matter, dismissal is appropriate because Plaintiff has failed to plead any
 5 facts showing that the instant action is timely. Further, dismissal is appropriate because
 6 Plaintiff has not alleged any facts demonstrating that he has suffered a constitutional
 7 violation caused by a person acting under color of state law or a federal actor. Indeed,
 8 Plaintiff has pled no facts suggesting that he has standing to bring a civil rights action
 9 against “The United Klans” predicated on the bombing of the 16th Street Baptist Church in
 10 Birmingham, Alabama.² Plaintiff has not alleged any facts showing that he has suffered an
 11 “injury-in-fact.” Accordingly, the Court DISMISSES the complaint for failure to state a
 12 claim on which relief may be granted. Because the Court finds that granting leave to
 13 amend would be futile, this action is dismissed without leave to amend. Cato v. United
 14 States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to amend
 15 his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the
 16 deficiencies of the complaint could not be cured by amendment.”).

17 **III. CONCLUSION**

18 For the reasons stated above, IT IS HEREBY ORDERED THAT:

19 1. The complaint is DISMISSED without leave to amend.
 20 2. Plaintiff’s IFP application is DENIED as MOOT.
 21 3. The Clerk shall close the file and terminate any pending matters.

22 IT IS SO ORDERED.

23 Dated: 5/28/2014


 24 SAUNDRA BROWN ARMSTRONG
 25 United States District Judge

26 ² To establish Article III standing, Plaintiff must allege facts showing an “injury-in-
 27 fact,” causation, and redressability. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561
 28 (1992). Injury-in-fact requires damage to a “legally protected interest that is both concrete
 and particularized, and actual or imminent, not conjectural or hypothetical.” Id. at 560
 (citations and quotation marks omitted). “The party invoking federal jurisdiction bears the
 burden of establishing these elements.” Id. at 561.